IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.280 OF 1988

M/s.Door-Oliver (India) Ltd .. Applicant.
V/s.
The Commissioner of Income-tax,
Bombay City-II, Bombay .. Respondent.

Mr.R.V. Desai, senior counsel with Mr.P.C. Tripathi for the applicant.

CORAM : S. RADHAKRISHNAN &
J.P. DEVADHAR, JJ.

DATED : 7TH MARCH, 2005.

P.C. :

1. Heard learned counsel for the applicant and the respondent. The following questions of law have been referred, which reads as under :

> 1. Whether on the facts and in the circumstances of the case the Income-tax Appellate Tribunal erred in law in holding that the sum of Rs.19,66,643/-, being part of the compensation and fees payable to M/s.Dorr-Oliver Inc. of U.S.A. under the agreement of 1st January, 1959 was not admissible as deduction in the computation of assessee's Total Income ?
>
> 2. Whether on the facts and in the circumstances of the the Tribunal ought to have held that the entire amount of Rs.30,62,513/- being the compensation and fees payable to Door-Oliver Inc. of USA was deductible in arriving at the assessee's Total Income ?
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> 3. Whether on the facts and in the circumstances of the case the Income-tax Appellate Tribunal erred in law in holding that the sum of Rs.1,50,000/- expended in purchasing deferred annuity policy in favour of the director is includible as perquisite for the purposes of Section 40A(5) of the Income-tax Act, 1961 ?

> 4. Whether on the facts and in the circumstances of the case the Income-tax Appellate Tribunal was right in law in holding that the assessee is not entitled to the surtax liability being allowed as a deduction in the computation of income ?

2. The learned counsel for the applicant fairly states that as far as question Nos.1 and 2 are concerned, the same are squarely covered by the judgment of this court in the case of **Door-Oliver (India) Ltd. V/s. CIT [234 ITR 723]** in favour of the revenue against the assessee. As far as question No.3 is concerned, in the light of the judgment of the Supreme Court in the case of **CIT V/s. Navnit Lal Sarkar Lal [247 ITR 70]**, wherein it is held that the expenditure incurred is a part of salary, covered by the judgment of the Supreme Court. Accordingly, the question is answered in favour of the revenue against the assessee. As far as question No.4 is concerned, the same is covered by the judgment of this court in the case of **Lubrizol India Ltd. V/s. CIT [187 ITR 25]** in favour of the revenue against the assessee.

3. In view thereof, all the four questions are answered in affirmative against the assessee in favour of the revenue.

(S. RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)